

Attorney or Party Name, Address, Phone, Fax, Email: KARYN A. DOI (#7687) Leu & Okuda, Attorneys at Law 222 Merchant St., Main Floor Honolulu, HI 96813 Tel. (808) 538-1921 Fax. (808) 523-9585 Email: karyn@leu-okuda.com Attorney for Movant	For court use only
UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII	Case No.: 07-00279 RJF Chapter: 13
Debtor: CALVIN COLE, JR. and, if any, Joint Debtor: ELLA MAE COLE	Preliminary Hearing: Date: October 3, 2007 Time: 1:30 PM

COVER SHEET FOR MOTION FOR RELIEF FROM STAY

Instructions: Complete section I for all motions. Complete section II if seeking to enforce a security interest. Complete section III if seeking to enforce a lease. Complete section IV if seeking relief for other purposes. Complete section V if seeking any of the extraordinary relief there listed.

I. Relief sought under: ☒ 11 U.S.C. § 362(d) - Automatic Stay ☐ 11 U.S.C. § 1301(c) - Ch. 13 Codebtor Stay

Movant: Countrywide Home Loans, Inc., as servicing agent for Bank of New York as Trustee for the Certificateholder

Movant is (mortgagee, lessor, agent, plaintiff, etc.): Mortgagee

Subject Matter (identify real/personal property, litigation, etc.): 95-735 Maiaku Street, Mililani, Hawaii 96789

☐ Property is Debtor's principal residence

If litigation is pending, describe last major prepetition event: n/a

(decree of foreclosure, writ of possession, etc.)

II. Security Interest (mortgage, lien, etc.)

Movant's lien position (1st, 2nd, etc.): 1st Date of loan: 03/18/2005 Maturity: 04/1/2035

Orig. amt: \$ 360,000.00 Prin. bal.: \$ 360,000.00 Int., late fees, etc.: \$ est. 13,031.03

Mo. pmt.: \$ 1,700.04 Prepetition arrearage: \$ 6,032.72 Postpetition arrearage: \$ est. 3,459.68

Debtor's valuation in schedules: \$ 603,000.00 Movant's valuation (if different): \$

All encumbrances: Sr. lienholder: Countrywide Home Loans, Inc. \$ est. 373,031.03

2nd lienholder: Countrywide Home Loans, Inc. \$ est. 117,835.00

Other liens: GMAC Mortgage, LLC \$ est. 53,375.00

Total liens: \$ est. 544,241.03

III. Lease

Date of lease: N/A Payment: \$ per

Prepetition arrearage: \$ Postpetition arrearage: \$

IV. Other: Describe relief sought, state title and court of any pending litigation, and any applicable insurance.

Movant requests that relief from the automatic stay be granted in its favor so that it may pursue and enforce its remedies, including but not limited to, obtaining judgment, recovering possession over the Property, selling said Property and recovering payment of its secured claim from the sale of said Property.

V. Extraordinary relief requested: ☐ Retroactive relief ☐ "in rem" relief ☐ No 10-day stay of order

LEU & OKUDA
Attorneys at Law

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Attorneys for Secured Creditor
COUNTRYWIDE HOME LOANS, INC., as servicing agent for
BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDER

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re:	)	Case no. 07-00279 RJF
	)	(Chapter 13)
CALVIN COLE, JR.,)	
ELLA MAE COLE,	)	MOTION FOR RELIEF FROM
	)	AUTOMATIC STAY; MEMORANDUM IN
Debtors.	)	SUPPORT OF MOTION; DECLARATION
	)	OF SECURED CREDITOR; EXHIBIT
	)	"A"

Preliminary Hearing:
Date: October 3, 2007
Time: 1:30 p.m.
Judge: Robert J. Faris

MOTION FOR RELIEF FROM AUTOMATIC STAY

COUNTRYWIDE HOME LOANS, INC., servicing agent for BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDER ("Movant"), Secured Creditor of Debtors CALVIN COLE, JR. and ELLA MAE COLE, by and through its attorneys, Leu & Okuda, Attorneys at Law, moves the Court for an Order granting relief from the automatic stay imposed under 11 U.S.C. §362(a).

This motion is brought pursuant to 11 U.S.C. §362(d), Bankruptcy Rules 4001 and 9014, and Local Bankruptcy Rule 4001-1 of the United States Bankruptcy Court for the District of Hawaii.

Movant currently holds a Note and Mortgage dated March 18, 2005, on the property located at 95-735 Maiaku Street, Mililani, Hawaii 96789-2815; TMK: (1) 9-5-029-100 (hereinafter "Property").

Movant, therefore, requests relief from the automatic stay in order to pursue and enforce its remedies, including but not limited to, obtaining judgment as to all amounts due and owing for unpaid principal, interest, charges, advances, and attorneys' fees and costs incurred in a foreclosure action and in this case, foreclosing upon its mortgage against the Debtors' interest in the Property, recovering possession over the Property, selling said Property and recovering payment of its secured claims from the sale of said Property.

NOTICE IS HEREBY GIVEN THAT THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

DATED: Honolulu, Hawaii, September 7, 2007.

/s/ KARYN A. DOI (#7687)
KARYN A. DOI
Attorney for Movant

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re:	)	Case no. 07-00279 RJF
	)	(Chapter 13)
CALVIN COLE, JR.,)	
ELLA MAE COLE,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION
Debtors.)	
)	

MEMORANDUM IN SUPPORT OF MOTION

Movant, in support of Motion for Relief from Automatic Stay, states as follows:

I. STATEMENT OF THE FACTS

On or about March 18, 2005, Debtors CALVIN COLE, JR. and ELLA MAE COLE ("Debtors"), executed and delivered a certain Interest Only Adjustable Rate Note ("Note") in the principal amount of \$360,000.00 to COUNTRYWIDE HOME LOANS, INC. In further consideration of said loan, Debtor executed and delivered to Mortgage Electronic Registration Systems, Inc., solely as a nominee for Countrywide Home Loans, Inc. a Mortgage dated March 18, 2005, securing the real property located at 95-735 Maiaku Street, Mililani, Hawaii 96789-2815; TMK: (1) 9-5-029-100 ("Property") for the purpose of securing repayment of the Note.

Movant is the current holder, assignee and payee of the Note and Mortgage.

On March 22, 2007, Debtors filed a Voluntary Chapter 13 Petition under Title 11 of the United State Bankruptcy Code. Trustee Howard M.S. Hu ("Trustee") has been duly appointed as Trustee of the Debtor's Estate.

Debtors' Amended Chapter 13 Plan was confirmed by Order of the Court filed June 8, 2007.

As a result of the filing of this Petition, Movant has been stayed from exercising its rights and remedies afforded under the Note and Mortgage, including, but not limited to foreclosing upon the Property.

The Note and Mortgage are in default by virtue of the Debtors' failure to make certain payments thereunder. See Declaration of Secured Creditor, para. 9 and the accompanying Exhibit "A".

II. LEGAL ARGUMENT.

A. Relief from the automatic stay is warranted.

Section 362(a) of the Bankruptcy Code provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the

debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

....

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

The filing of the bankruptcy petition triggers the automatic stay of §362(a), notwithstanding the lack of actual notice of commencement of the proceedings. In re Garcia, 23 B.R. 266, 267 (N.D.Ill. 1982). The automatic stay protects the Debtor and pre-petition creditors as well as property of the Debtors' bankruptcy estate.

Section 362(d) of the Bankruptcy Code provides, in relevant part, the basis for which relief from the automatic stay can be granted:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as terminating, annulling, modifying, or conditioning such stay -

- (1) for cause including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the Debtor does not have any equity in such property; and

(B) such property is not necessary to an effective reorganization.

"Cause", including the lack of adequate protection, entitles a party in interest to relief from the automatic stay. See In re Development, Inc., 36 Bankr. Rep. 998, 1103 (Bankr. D. Haw. 1984). "Cause", though, is not limited only to lack of adequate protection, as "any cause convincing the Court that the stay should be modified is adequate." See In re Anderson, 36 Bankr. Rep. 120, 123 (Bankr. D. Haw. 1983).

Failure to make post-confirmation payments can also constitute "cause" for purposes of granting relief from the automatic stay. See In re Ellis, 60 B.R. 432, 435 (9th Cir. BAP 1985).

In this case, Debtors are delinquent post-petition in the total amount of \$3,459.68 as of August 24, 2007. This includes payments which Debtors failed to remit post-confirmation.

Therefore, cause exists such that it is appropriate to grant Movant's Motion.

III. REQUEST FOR RELIEF.

Based on the foregoing reasons, Movant requests for an order terminating the stay to allow it to pursue its remedies, including but not limited to, commencing or proceeding with a foreclosure action against the Debtors, obtaining judgment for all amounts due

under the Mortgage Notes and Mortgages, foreclosing upon the Property securing the Mortgages Notes, obtaining payment for its secured claim from a foreclosure sale, and obtaining and recovering possession of the mortgaged Property.

Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workouts/loss mitigation agreement. The Movant may contact the Debtors via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

Movant will not seek a deficiency judgment without further Order from the Court.

DATED: Honolulu, Hawaii, September 7, 2007.

/s/ KARYN A. DOI (#7687)
KARYN A. DOI
Attorney for Movant

LEU & OKUDA
Attorneys at Law

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BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDER

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re:	)	Case no. 07-00279 (RJF)
	)	(Chapter 13)
CALVIN COLE, JR.,)	
ELLA MAE COLE,	)	DECLARATION OF SECURED
	)	CREDITOR
Debtors.)	
)	

DECLARATION OF SECURED CREDITOR

I, REGINA CLARK, declare as follows:

1. I hold the position of Bankruptcy Specialist at COUNTRYWIDE HOME LOANS, INC., servicing agent for BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDER ("BANK OF NEW YORK"), Secured Creditor and Movant in the above-captioned matter.

2. I am one of the Custodians of Records made and kept in the ordinary course of Countrywide Home Loans, Inc.'s and/or BANK OF NEW YORK's business. Said records are in the care,

custody and control of Countrywide Home Loans, Inc. and/or BANK OF NEW YORK.

3. I am competent and qualified to testify on the matters set forth herein.

4. I swear and certify that attached as Exhibit "1" to Movant's Proof of Claim filed May 25, 2007, is a true and correct copy of the Interest Only Adjustable Rate Note ("Note") dated March 18, 2005 in the amount of \$360,000.00 and in favor of Countrywide Home Loans, Inc.. Said exhibit is made and kept in the ordinary course of Movant's business.

5. Attached as Exhibit "2" to Movant's Proof of Claim filed May 25, 2007, is a true and correct copy of the Mortgage dated March 18, 2005, in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Countrywide Home Loans, Inc. and recorded in Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document no. 3472750. Said exhibit is made and kept in the ordinary course of Movant's business.

6. Movant is now the current holder of the Note and Mortgage.

7. The Mortgage secures the real property located at 95-735 Maiaku Street, Mililani, Hawaii 96789-2815; TMK: (1) 9-5-029-100.

8. Attached as Exhibit "A" is a true and correct copy of the post-petition payment history which is made and kept in the ordinary course of the Movant's business.

9. According to Exhibit "A" which pertains to the subject Note and Mortgage, the post-petition arrearages due and owing as of August 24, 2007 by debtors are as follows:

2 payments @ \$1,700.04/month (7/1/07 - 8/1/07)	\$3,400.08
2 late charges @ \$75.00/month (7/1/07 - 8/1/07)	\$ 150.00
Suspense:	(\$ 90.40)
TOTAL POST-PETITION ARREARAGES DUE	\$3,459.68

10. This amount does not include attorneys' fees and costs incurred in connection with these matters.

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I, REGINA CLARK, declare under the penalty
of perjury that the foregoing is true and correct.

Executed on SEPTEMBER 6, 2007, in the County
of TARRANT, State of TEXAS.

Regina Clark
(Signature)

EXHIBIT “A”

Account: 94094514 - 0

(HAWAII)

CF24

UPDATE

Stip:	Stip Due:	Stip Amt:	.00	Dec File:	3/27/07	Term:		
Partial M:	90.41	Partial T:	.00	Last Trustee\$:				
Total M:	90.41	Total T:	.00	T Remained:	13499.22			
D	M/T	DATE	AMOUNT	CHK#	DATE	PRE-PETIT	DATE	POST-PETIT
			.00		11/01/06	.00	3/01/07	.00
			.00			.00		.00
	M	1/31/07	17.28			.00		17.28
		3/30/07	1626.91		12/01/06	.00	4/01/07	1626.91
		4/05/07	1626.91		1/01/07	.00	5/01/07	1626.91
		7/11/07	1626.91		2/01/07	.00	6/01/07	1626.91
	M	7/11/07	73.13			.00		73.13
			.00			.00		.00
			.00			.00		.00
			.00			.00		.00
			.00			.00		.00
			.00			.00		.00

F2-PREV 3-EXIT 4-SER ACT 5-REINST 6-TXTMGT 7-HISTORY 8-FEES 10-FOREC 11-PRINT
F12-BYPASS 24-UPDATE/EXIT ENTER-VAL/SAVE LDGR

Account: 094094514 Name: ELLA MAE & CALVIN COLE

Requested by: BCRUZ

Date Analyzed: 3/27/2007 Paid-to-date: 11/01/2006

PGM: IEP100RA

Escrow Item	ST/TY/Frq	Next Due	Due Date	Mo/Req	Escrow Bal:	547.71
HazIns 1st	2 20 12	1,608.76	8/15/2007	134.06		

Total amt analyzed:	1,608.76	134.06	5 PYMTS @ \$:	634.55
RV%: .166 Reserv/Req:	267.05	22.25	Proj BAL:	1,182.26
			Refs/Disb:	634.55-
			Proposed	Current
Lowest possible BAL:	524.81-	Prin/Interest:	1,500.00	1,500.00
Reserve requirement:	267.05	Required esc:	134.06	126.91
Short/Overage:	524.81-	Shortage pay:	43.73	.00
Divide short by:	12	Reserve req:	22.25	.00
Escrow change amount:	73.13	CR/DIS:	.00	.00
Payment change amount:	73.13	Rounding amt:	.00	.00
Analysis eff date:	5/01/2007	HUD-Asst/BuyDn:	.00	.00
		New mo. pay:	1,700.04	1,626.91

F7=Back F8=PrevRec F10=Dep/Disb

F12=Prev F24=More